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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 LOS ANGELES DIVISION

12 YORAM COHEN, an individual,

13 Plaintiff,

14 vs.

15 BIRDSBORO KOSHER FARMS
16 CORP., a Pennsylvania Corporation,

17 Defendants.

Case No.: 2:16-cv-02958-PSG (JPRx)

Assigned to Hon. Phillip S. Gutierrez
and Hon. Jean P. Rosenbluth

18 **OPPOSITION TO DEFENDANT**
19 **BIRDSBORO KOSHER FARMS**
20 **CORP.'S MOTION TO DISMISS**
21 **AND MOTION FOR MORE**
22 **DEFINITIVE STATEMENTS;**
23 **MEMORANDUM OF POINTS AND**
24 **AUTHORITIES; DECLARATION**
25 **OF ROBIN MASHAL; EXHIBITS**

26 [Fed. R. Civ. Proc. 12(b)(6) and 12(e)]

27 Date: 07/25/2016

28 Time: 1:30 p.m.

Room: 880

Location: Roybal Courthouse
255 East Temple Street
Los Angeles, CA 90012

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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION.**

The instant motion, brought by Birdsboro Kosher Farms Corp. (“BKF”), is a waste of the Court’s time and resources. BKF knows all too well it owes loans in the principal amounts of \$200,000 to Plaintiff Yoram Cohen (“Cohen”).

Cohen is in the business of selling Kosher meat. BKF is a business that slaughters and processes Kosher meat. In January 2013, defendants BKF and Isaac Perlmutter (“ISSY”), BKF’s Chief Executive Officer, approached Cohen saying BKF needs a \$100,000 short term loan (the “First Loan”), based on which BKF would provide Cohen an exclusive distributorship agreement for the sale of BKF’s goods (i.e., Kosher meat) in Los Angeles County and Orange County, California. *Cmplt.* ¶10. The parties agreed that ISSY would sign the promissory note for the loan, and BKF would sign corporate guaranty for the loan. *Cmplt.* ¶11. The parties agreed that Cohen will hold 15% of BKF’s share of stock as collateral (“Collateral”) for repayment of the loan. *Cmplt.* ¶11. In order to induce Cohen to extent this loan, ISSY and BKF represented to Cohen that ISSY and BKF are in strong financial health. *Cmplt.* ¶11. Cohen relied on ISSY and BKF’s representations in agreeing to make the First Loan. *Cmplt.* ¶11. ISSY and BKF signed the Secured Promissory Note and Corporate Guaranty (the “First Loan Agreements”) on or about February 4, 2013. *Cmplt.* ¶12 and **Exhibit 1**. Based on the defendants’ instructions to Cohen, Cohen transmitted \$100,000 in loan funds via wire transfer to ISSY’s account.¹ On or about February 4, 2013, BKF signed an Exclusive Distributorship Agreement in favor of Cohen. *Cmplt.* ¶13.

¹ As recited in the promissory notes, Cohen borrowed money at 4.50% interest rate, and loaned it to BKF at the same 4.50% interest rate. See Complaint’s **Exhibit 1** (“page 2 of 5”) and **Exhibit 2** (“page 2 of 5”).

1 In June 2013, defendants again approached Cohen for an additional
 2 \$100,000 short-term loan (the “Second Loan”). *Cmplt.* ¶14. ISSY and BKF issued
 3 BKF’s check number 1013 in the amount of \$100,000 (“Check 1013”) and
 4 delivered it to Cohen for repayment of the First Loan’s principal balance. *Cmplt.*
 5 ¶14. ISSY and BKF assured Cohen that the First Loan will be timely repaid and
 6 that BKF and ISSY have the financial ability to repay the Second Loan. *Cmplt.*
 7 ¶14. Cohen relied on ISSY and BKF’s representations in agreeing to make the
 8 Second Loan. *Cmplt.* ¶14. On or about June 11, 2013, ISSY and BKF signed a
 9 Secured Promissory Note and Corporate Guaranty (the “Second Loan
 10 Agreements”). *Cmplt.* ¶12 and **Exhibit 2**. BKF received consideration for its
 11 corporate guaranties, as the First Loan and Second Loan funds were intended for
 12 BKF’s benefit.² In fact, based on defendants’ instructions, Cohen sent the
 13 \$100,000 in loan funds via checks made payable to BKF, which checks were
 14 negotiated by BKF at its bank.³

16 Cohen never received Collateral for the loans. *Cmplt.* ¶21. Cohen was
 17 never repaid on the First Loan or the Second Loan. *Cmplt.* ¶¶28, 43, 53 and 68.
 18 Cohen deposited Check 1013, but the check was returned to Cohen unpaid with
 19 the notation “Closed Account, Do Not Re-Deposit.” *Cmplt.* ¶16.

22 ² As recited in each promissory note and in each corporate guaranty
 23 form, the loans were intended for BKF. *See*, Complaint’s **Exhibit 1** (“page 2 of 5”
 24 and “page 3 of 5”), **Exhibit 2** (“page 2 of 5” and “page 3 of 5”).

25 ³ Prior to BKF filing the instant motion, Cohen’s counsel sent a letter
 26 to BKF’s counsel and once again explained these facts, and provided supporting
 27 documents. Apparently, BKF is more interested in clogging up this Court’s
 28 calendar with such motions than to work on a resolution. *See, Mashal Decl.* and
 “**Exhibit F**”.

After several attempts to informally resolve these issues, Cohen filed action in the Los Angeles Superior Court (“LASC”). Cohen took default of BKF and ISSY in the LASC action, and obtained default judgment against both of them. *Mashal Decl.* ¶¶ 3-4 and Exhibit A and Exhibit B. BKF brought motion to set aside default judgment and the LASC granted that motion. *Mashal Decl.* ¶ 5 and Exhibit C. The judgment stands unchanged as to ISSY. BKF removed the LASC action to this Court on or about April 29, 2016.

II. APPLICABLE LEGAL STANDARDS.

A. *Standard of Review for 12(b)(6) Motions.*

Motions to dismiss for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure are viewed with disfavor, and, accordingly, dismissals for failure to state a claim are “rarely granted.” *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997) (internal citation omitted).

In deciding a motion to dismiss, the court must accept as true the allegations of the complaint and draw reasonable inferences in the plaintiff’s favor. *Doe v. United States*, 419 F.3d 1058, 1062 (9th Cir. 2005). In ruling on a demurrer, all allegations in the complaint “must be liberally construed, with a view to substantial justice between the parties.” *Cal. Code Civ. Proc.* § 452. Inquiry into the adequacy of the evidence is improper. *Enesco Corp. v. Price/Costco, Inc.*, 146 F.3d 1083, 1085 (9th Cir. 1998).

“While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, ... a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of a cause of action’s elements will not do. Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint’s allegations are true.” *Bell Atlantic Corp. v.*

1 *Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted).

2 A court may not dismiss a complaint “unless it appears beyond doubt that
3 the plaintiff can prove *no set of facts* in support of his claims which would entitle
4 him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) (emphasis supplied).
5 Regarding the “no set of facts” test, the Supreme Court has clarified that “once a
6 claim has been stated adequately, it may be supported by showing any set of facts
7 consistent with the allegations in the complaint.” *Bell Atlantic Corp. v. Twombly*,
8 55 U.S. 544, 563 (2007).

9 If the Court dismisses the complaint, it “should grant leave to amend even if
10 no request to amend the pleading was made, unless it determines that the pleading
11 could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203
12 F.3d 1122, 1127 (9th Cir. 2000). In making this determination, the court should
13 consider factors such as “the presence or absence of undue delay, bad faith,
14 dilatory motive, repeated failure to cure deficiencies by previous amendments,
15 undue prejudice to the opposing party and futility of the proposed amendment.”
16 *Moore v. Kayport Pckg. Express*, 885 F.2d 531, 538 (9th Cir. 1989).

17 ***B. Standard of Review for 12(e) Motions.***

18 The Federal Rules of Civil Procedure are premised on a “liberal system of
19 ‘notice pleadings.’” *Leatherman v. Tarrant Cty. Narc. Intel. & Coord. Unit*, 507
20 U.S. 163, 168 (1993). Rule 8(a)(2) requires only “a short and plain statement of
21 the claim showing that the pleader is entitled to relief.” The Supreme Court has
22 clarified that the Rules “do not require a claimant to set out in detail the facts upon
23 which he bases his claim. To the contrary, all the Rules require is ‘a short and
24 plain statement of the claim’ that will give the defendant fair notice of what the
25 plaintiff’s claim is and the grounds upon which it rests.” *Conley v. Gibson*, 355
26 U.S. 41, 78 (1957).
27
28

Motions for a more definite statement are “proper only where the complaint is so indefinite that the defendant cannot ascertain the nature of the claim being asserted.” *Sagan v. Apple Comp., Inc.*, 874 F. Supp. 1072, 1077 (C.D. Cal. 1994). A plaintiff need only “set forth enough details so as to provide the defendant and the court with a fair idea of the basis of the complaint and the legal grounds claimed for recovery.” *Self Directed Pl. Corp. v. Control Data Corp.*, 908 F.2d 462, 466 (9th Cir. 1990). Rule 12(e) motions are viewed with disfavor and are rarely granted. *Sagan*, 874 F. Supp. at 1077.

III. LEGAL ANALYSIS.

A. *BKF Failed to Properly Meet and Confer prior to Bringing the Instant 12(b)(6) and 12(e) Motions.*

In the afternoon of Friday, May 6, 2016, BKF’s counsel sent an e-mail to Cohen’s counsel saying BKF intends to file its 12(b) and 12(e) motions, but counsel’s e-mail provided no explanation of any grounds for such motions. *Mashal Decl.* ¶ 6 and **Exhibit D**. Cohen’s counsel replied by e-mail to meet and confer concerning remanding the action to the Los Angeles Superior Court, and also informed BKF counsel that his e-mail does not provide any grounds for a 12(b) or 12(e) motion. *Mashal Decl.* ¶ 6 and **Exhibit E**.

At approximately 4:00 p.m. that Friday afternoon, BKF’s counsel telephoned Cohen’s counsel. Cohen’s counsel asked BKF’s counsel to provide a written summary of the argument behind the proposed 12(b) and 12(e) motions. BKF’s counsel said that afternoon was the deadline for BKF to file its motions and therefore, there is no time. Cohen’s counsel and BKF’s counsel agreed to stipulated to a mutual time extension, which will allow BKF’s counsel to properly meet and confer. *Mashal Decl.* ¶7. The parties entered stipulation, which stipulation and proposed order were filed in this action, identified as Document

1 numbers 7 and 7-1, respectively.

2 On May 25, 2016, Cohen's counsel sent letter to BKF's counsel to further
3 meet and confer regarding remanding this action to the Los Angeles Superior
4 Court, and also provided BKF's counsel evidence that \$100,000 of Cohen's loans
5 were paid by checks directly paid to BKF. *Mashal Decl.* ¶8 and **Exhibit F**. A few
6 hours later, BKF's counsel filed the instant motion without meet and conferring.

7 Therefore, the instant motions should be dismissed for BKF's failure to
8 properly meet and confer.

9
10 ***B. BKF Improperly Advances Fictional Theories About "Commercial***
11 ***Bribery" in Contradiction of Clearly Pleaded Facts, and Despite***
12 ***Having Received Evidence to the Contrary.***

13 The loan documents attached to Cohen's complaint as **Exhibit 1** and
14 **Exhibit 2** clearly indicate that the loan funds were intended for BKF's benefit. It
15 is unclear why BKF's motion herein overlooks prominently recited facts in the
16 Cohen's complaint and attached Exhibits, and instead, tries to replace them with
17 fictional fact patterns. Each of the two secured promissory notes clearly recite that
18 the moneys loaned by Cohen were intended for BKF. The last paragraph in each
19 promissory note states: "*BKF is a newly formed corporation in need of a loan,*
20 *and Maker is a major shareholder of BKF.*" (emphasis supplied). Furthermore,
21 looking at the very first paragraph of each corporate guaranty form, this language
22 stands out:

23 "WHEREAS, Isaac Perlmutter ("Maker") wishes to borrow money
24 from Yoram Cohen ("Holder") pursuant to the foregoing Secured
25 Promissory Note ... (the "Note") and Maker *intends to make that*
26 *money available to Birdsboro Kosher Farms Corporation, a*
27 *Pennsylvania Corporation, ...*" (emphasis supplied).
28

Despite clear recitals in **Exhibit 1** and **Exhibit 2** attached to Cohen’s Complaint, and despite having received evidence from Cohen’s counsel (see *Mashal Decl.* and **Exhibit F**), clearly showing BKF received the loan funds from Cohen, BKF filed the instant motion and advanced meritless arguments such as references to Section 641.3 of the *California Penal Code*.⁴

Under the circumstances, BKF’s arguments concerning “commercial bribery” and “felony bribery” are clearly false and misleading. However, BKF does not stop there. BKF’s moving papers repeat this baseless “bribery” argument no less than *15 times*, and BKF goes on to promote this as the “*only explanation*” for loans extended by Cohen. *Moving Papers*, 5:22, 6:8, and 7:14. Such patently meritless arguments by BKF push the limits of ethical conduct.

C. The Complaint Allegations and Contents of Attached Exhibits Surpass the Requirements for Pleading Fraud.

Contrary to BKF’s contention, the Complaint and attached exhibits detail all relevant facts with the required specificity.

1. The Complaint and Attached Exhibits Clearly Answer BKF’s Questions on “Who, What, Where and When.”

Cohen’s Complaint allegations and the attached exhibits answer the “who, what, when and where” questions raised in the moving papers.

(a) **Who**: There is no question as to the identity of parties who made representations to Cohen. The Complaint alleges that “representations by ISSY were made both in his personal capacity and in ISSY’s capacity as the authorized representative of BKF.” *Cmpl.* ¶ 9. The written loan documents are

⁴ California law frowns upon threats of criminal prosecution made in order to obtain an advantage in a civil dispute.

1 attached to Cohen’s Complaint as **Exhibit 1** and **Exhibit 2**, respectively. On the
 2 last page of each corporate guaranty form, the name of “BIRDSBORO KOSHER
 3 FARMS CORP.” is typed, below which it is signed by “Isaac Perlmutter” as its
 4 “Chief Executive Officer.” Furthermore, Paragraph 8 of each corporate guaranty
 5 contains a “Warranty of Authority” clause:

6 “Guarantor *represents and warrants* that Guarantor has the corporate
 7 power to enter into this corporate guaranty and to carry out its
 8 obligations hereunder. The execution and delivery of this corporate
 9 guaranty and the performance of the Guarantor’s obligations
 10 hereunder have been *duly authorized* by the *Board of Directors* of the
 11 Guarantor, and *no other corporate proceedings on the part of the*
 12 *Guarantor are necessary to authorize such execution, delivery and*
 13 *performance*. This corporate guaranty has been *duly executed* by the
 14 Guarantor and is the legal, valid and binding obligation of the
 15 Guarantor, ...” (emphasis supplied).
 16

17 (b) What: The Complaint alleges that “representations by
 18 ISSY were made both in his personal capacity and in ISSY’s capacity as the
 19 authorized representative of BKF.” *Cmplt.* ¶ 9. Furthermore, the Complaint
 20 alleges that “In order to induce Plaintiff to make this loan, ISSY and BKF
 21 *represented* to Plaintiff that ISSY and BKF are in *strong financial health*.” *Cmplt.*
 22 ¶ 18 (emphasis supplied). Additionally, the Complaint alleges that BKF and
 23 ISSY, in the context of obtaining Second Loan, “*assured* Plaintiff that the First
 24 Loan will be *timely repaid* and that BKF and ISSY have the *financial ability* to
 25 repay the Second Loan.” *Cmplt.* ¶ 19. Each of the two secured promissory notes,
 26 on their second page and just above their signature lines, provide: “The Maker
 27 hereby *represents and warrants* to Holder that Maker is currently in *strong*
 28

1 *financial health.*” (emphasis supplied). These representations and warranties of
2 financial health, made in the context of obtaining loans from Cohen, were clearly
3 made to induce Cohen to extend the loans.

4 (c) When: The Complaint alleges ISSY and BKF
5 approached Cohen and made representations in January 2013 (before the First
6 Loan), and again in June 2013 (before the Second Loan). *Cmpl.* ¶¶ 10 and 12.
7 Furthermore, the written representations contained in loan documents are attached
8 to the Complaint as **Exhibit 1** and **Exhibit 2**, and they are clearly dated February
9 4, 2013 and June 11, 2013, respectively.⁵

10 (d) Where: Each set of the loan documents provide that they
11 were executed at Birdsboro, Pennsylvania.

12
13 **2. Representations and Warranties of Financial Strength and**
14 **of Timely Loan Repayment, in the Context of Obtaining a**
15 **Loan are Actionable Misrepresentation.**

16 A false statement of operation of business to show profit where the actual
17 records showed a loss is actionable misrepresentation. *Mariani v. Schonfeld*, 126
18 Cal. App. 2d 187, 189 (1954). A promise to do something necessarily implies the
19 intention to perform, and where that intention is absent, there is an implied
20 misrepresentation of fact, which is actionable fraud. *Cal. Civ. Code* § 1710(4);
21 *Lazar v. Superior Court*, 12 Cal. 4th 631 (1996). Here, BKF’s representations and
22 warranties of strong financial health, and that loan will be timely repaid, made in
23 context of obtaining a loan, are all actionable misrepresentation.

24
25
26 ⁵ BKF attempts to confuse the facts based on the dates of the FedEx
27 shipping labels. The loan documents were first delivered by facsimile, and
28 subsequently the original ink signatures were delivered by FedEx delivery.

3. Cohen's Reliance on BKF's Representations and Warranties was Reasonable.

"Negligence on the part of the plaintiff in failing to discover the falsity of a statement is no defense when the misrepresentation was intentional rather than negligent. Nor is a plaintiff held to the standard of precaution or of minimum knowledge of a hypothetical, reasonable man." *Whiteley v. Philip Morris, Inc.*, 117 Cal. App. 4th 635, 684 (2004) (internal citations omitted). "Except in the rare case where the undisputed facts leave no room for a reasonable difference of opinion, the question of whether a plaintiff's reliance is reasonable is a question of fact." *Alliance Mtg. Co. v. Rothwell*, 10 Cal. 4th 1226, 1239 (1995) (internal citations omitted).

Here, BKF's moving papers attempt to twist the Complaint allegations to argue against justifiable reliance. Cohen's Complaint never alleges he did not believe BKF is in good financial health, but that Cohen was not inclined to make loans to a newly formed business. The difference is *length* of business existence/history as opposed to financial *strength*. Cohen's reliance on the BKF's representations and warranties was justified.

As detailed above, all fraud elements have been alleged with specificity. The other arguments BKF attempts to raise, are aimed at disputing sufficiency of evidence, which arguments do not belong in a Rule 12 motion. *Enesco Corp. v. Price/Costco, Inc.*, 146 F.3d 1083, 1085 (9th Cir. 1998).

D. The Fifth and Tenth Causes of Action for Corporate Guaranty Properly State Causes of Action.

Cohen's Complaint details the factual background behind the corporate guaranty forms. *Cmplt.* ¶¶ 3:20-4:17. The executed corporate guaranty forms are attached to Cohen's Complaint within **Exhibit 1** and **Exhibit 2**, which forms meet

1 the statute of frauds requirements. As detailed under Section III.B., *supra*,
 2 Cohen's loan funds were intended for BKF, and BKF did in fact receive them. As
 3 detailed under Section III.C.1.a., *supra*, each corporate guaranty form is executed
 4 by its Chief Executive Officer, and each corporate guaranty form contains BKF's
 5 representations and warranties as to the corporate authority behind its execution.

6 Furthermore, Paragraph 4 in each of the corporate guaranty forms provides,
 7 in pertinent parts:

8 "Waivers – To the maximum extent permitted by law, Guarantor
 9 hereby waives (a) all rights to require Holder to proceed against
 10 Maker or proceed against, enforce or exhaust any security for the
 11 Obligations or to marshall assets or to pursue any other remedy in
 12 Holder's power whatsoever; (b) all defenses arising by reason of any
 13 disability or other defense of Maker, ...; (c) all presentments,
 14 demands for performance, notices of nonperformance, ...; (d) all
 15 conditions precedent to the effectiveness of this Guaranty; ..."

16 Ironically, BKF's moving papers advance two contradictory arguments with
 17 respect to the corporate guaranties. First, BKF argues that ISSY did not have
 18 corporate authority to sign corporate guaranty forms on behalf of BKF. *Moving*
 19 *Pagers* 11:20-27. Then, BKF cites to *CACD/RAD Venture 2001-1 LLC v.*
 20 *Bradley*, 235 Cal. App. 4th 775 (2015), to argue that the corporate guaranties were
 21 shams, because corporate guaranties and promissory notes were all signed by
 22 ISSY. *Moving Papers* 12:3-11.

23 *Bradley* stands for the proposition that if an individual is the *alter ego* of a
 24 corporation, then when the individual signs loan documents on behalf of that
 25 corporate borrower, the individual can be treated as the primary obligor for the
 26 loan. *Bradley*, 235 Cal. App. 4th at 788. If BKF is in fact ISSY's *alter ego*, then
 27
 28

1 why is BKF insisting on proper corporate authority for ISSY to sign documents on
2 behalf of BKF? On the other hand, if the BKF is a bona fide corporate entity—
3 and not ISSY’s *alter ego*—then how would ISSY’s executing promissory notes in
4 his personal capacity and his executing corporate guaranty forms in his capacity as
5 the Chief Executive Officer raise any issues to be considered in this 12(b)(6)
6 motion?

7 ***E. The Sixth and Eleventh Causes of Action Properly State Causes of***
8 ***Action for Quasi-Contract Recovery.***
9

10 If the essential facts of some valid cause of action are alleged, the complaint
11 is good against a general demurrer. *Quelimane Co., Inc. v. Stewart Title Guar.*
12 *Co.*, 19 Cal. 4th 26, 38-39 (1998). “Erroneous or confusing labels attached by the
13 inept pleader are to be ignored if the complaint pleads facts which would entitle
14 the plaintiff to relief.” *Saunders v. Cariss*, 224 Cal. App. 3d 905, 908 (1990).
15 Where complaints allege cause of action for “unjust enrichment” courts have
16 construed them as a quasi-contract claims seeking restitution. *See, e.g.,*
17 *Rutherford Holdings, LLC v. Plaza del Rey*, 223 Cal. App. 4th 221, 231 (2014);
18 *Khasin v. Hershey Co.*, 5:12-cv-01862-EJD, 2012 WL 5471153, at *9 (N.D. Cal.
19 Nov. 9, 2012). A claim for restitution is permitted even if the party inconsistently
20 pleads a breach of contract claim that alleges the existence of an enforceable
21 agreement. *Klein v. Chevron U.S.A., Inc.*, 202 Cal. App. 4th 1342, 1389 (2012).
22 “[R]estitution may be awarded in lieu of breach of contract damages when the
23 parties had an express contract, but it was procured by fraud or is unenforceable or
24 ineffective for some reason.” *McBride v. Boughton*, 123 Cal. App. 4th 379, 388
25 (2004). Common counts do not require fact specific pleading and survive both
26 general and specific demurrer. *See, Pike v. Zadik*, 171 Cal. 273 (1915); *Moya v.*
27 *Northrup*, 10 Cal. App. 3d 276 (1970).
28

1 Here, BKF clearly has received and enjoyed Cohen's funds. Cohen is
 2 entitled to recover his damages by alternatively pleadings breach of contract,
 3 quasi-contract theories (such as money lent, or money paid and expended).

4 **IV. CONCLUSION.**

5 For the foregoing reasons, Cohen respectfully requests this Court to deny
 6 BKF's 12(b)(6) and 12(e) motions in their entirety, or in the alternative grant leave
 7 to amend.

8 Dated: July 1, 2016

**CENTURY CITY LAW GROUP,
 A PROFESSIONAL CORPORATION**

By: /s/ Robin Mashal
 Robin Mashal
 Counsel for Plaintiff
 YORAM COHEN

CENTURY CITY LAW GROUP
 A PROFESSIONAL CORPORATION

DECLARATION OF ROBIN MASHAL

I, Robin Mashal, declare and state as follows:

1. I am the attorney of record for plaintiff YORAM COHEN (“Plaintiff”), the plaintiff in this action.

2. I have personal knowledge of the facts stated herein.

3. The above entitled action was filed in the Los Angeles Superior Court (“LASC”) on August 13, 2014, naming BIRDSBORO KOSHER FARMS CORP. (“BKF”) and ISAAC PERLMUTTER (“ISSY”) as defendants.

4. On March 6, 2015, the Clerk of LASC entered default against BKF and ISSY, and on August 26, 2015, the Honorable Judge Holly E. Kendig, sitting in Dept. 42 of the LASC entered default judgment against BKF and ISSY. True copies of entry of default and entry of default judgment are attached hereto as “**Exhibit A**” and “**Exhibit B**,” respectively.

5. On BKF’s motion, on January 27, 2016 the Honorable Judge Holly E. Kendig set aside default judgment only as against BKF. A copy of the notice of ruling served by BKF’s counsel is attached hereto as “**Exhibit C**.”

6. In the afternoon of Friday, May 6, 2016, Michael Schwimer, counsel for BKF sent an e-mail to me saying he intends to file 12(b) and 12(e) motions. His e-mail provided no explanation or grounds for wanting to bring such motions. I sent a reply letter to Mr. Schwimer, in which letter I asked if he would stipulated to remand of this action to the LASC, and also told him his e-mail provides no information why 12(b) or 12(e) motions may be applicable here. True copies of Mr. Schwimer’s e-mail and my reply are attached hereto as “**Exhibit D**,” and “**Exhibit E**,” respectively.

7. Around 4:00 p.m., Friday, May 6, 2016, Mr. Schwimer called my office. I told him I cannot understand his reasoning why BKF may wish to bring

1 12(b) or 12(e) motions, and asked that he would send me something in writing to
 2 summarize his arguments. I also explained to him that I observe the Sabbath and
 3 that because it was Friday afternoon, I had to get home quickly. Mr. Schwimer
 4 said May 6 was the deadline for BKF to file its motions and there is no time for
 5 him to send me written explanations. I agreed to a mutual time extension so the
 6 parties can properly meet and confer. Mr. Schwimer prepared a STIPULATION
 7 TO EXTEND TIME TO RESPOND TO REMOVED COMPLAINT [L.R. 8-3],
 8 which document and its proposed order were filed with the Court and were
 9 identified as Document numbers 7 and 7-1, respectively.

10
 11 8. On May 25, 2016, I prepared a letter to Michael Schwimer and
 12 transmitted it to his office via Facsimile and via U.S. Mail. In my letter I asked
 13 that BKF would stipulate to remanding the above entitled action to the LASC. I
 14 also enclosed copies of documents showing \$100,000 of loans were remitted
 15 directly to BKF via three checks. True copies of my letter and its enclosures (with
 16 the bank account information redacted) are attached hereto as “**Exhibit F**.”

17 9. Mr. Schwimer never meet and confer with me about the subject of
 18 12(b) or 12(e) motion, as we had stipulated. Rather, a few hours after **Exhibit F**
 19 was faxed to Mr. Schwimer’s office, he proceeded to file the instant motion.

20 I declare under penalty of perjury that the foregoing is true and correct.
 21 Executed on this First day of July 2016, at Los Angeles, California.
 22
 23
 24
 25
 26
 27
 28

 /s/ Robin Mashal
 Robin Mashal

Exhibit A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Robin Mashal (California State Bar No. 205003) CENTURY CITY LAW GROUP, APC 1875 Century Park East, Sixth Floor, Los Angeles, California 90067-2507 TELEPHONE NO.: (310) 286-2000 FAX NO. (Optional): (310) 286-2525 E-MAIL ADDRESS (Optional): -- ATTORNEY FOR (Name): Yoram Cohen	FOR COURT USE ONLY CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles MAR 6 - 2015 Sherri R. Carter, Executive Officer/Clerk By Suzanne Wong, Deputy								
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles, California 90012 BRANCH NAME: Central Judicial District, Stanley Mosk Courthouse									
PLAINTIFF/PETITIONER: Yoram Cohen DEFENDANT/RESPONDENT: Birdsboro Kosher Farms Corp., et. al.									
<table style="width:100%;"> <tr> <td style="width:30%;">REQUEST FOR (Application)</td> <td style="width:30%;"> <input checked="" type="checkbox"/> Entry of Default </td> <td style="width:30%;"> <input type="checkbox"/> Clerk's Judgment </td> <td style="width:10%;">CASE NUMBER:</td> </tr> <tr> <td></td> <td> <input type="checkbox"/> Court Judgment </td> <td></td> <td style="text-align: center; vertical-align: top;">BC 554592</td> </tr> </table>		REQUEST FOR (Application)	<input checked="" type="checkbox"/> Entry of Default	<input type="checkbox"/> Clerk's Judgment	CASE NUMBER:		<input type="checkbox"/> Court Judgment		BC 554592
REQUEST FOR (Application)	<input checked="" type="checkbox"/> Entry of Default	<input type="checkbox"/> Clerk's Judgment	CASE NUMBER:						
	<input type="checkbox"/> Court Judgment		BC 554592						

1. TO THE CLERK: On the complaint or cross-complaint filed
- on (date): **August 13, 2014**
 - by (name): **YORAM COHEN, an individual**
 - ☒ Enter default of defendant (names): **BIRDSBORO KOSHER FARMS CORP., a Pennsylvania Corporation; ISAAC PERLMUTTER, an individual a/k/a Issy Perlmutter**
 - ☐ I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant (names):

(Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)

- e. ☐ Enter clerk's judgment
- (1) ☐ for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)
☐ Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The *Prejudgment Claim of Right to Possession* was served in compliance with Code of Civil Procedure section 415.46.
 - (2) ☐ under Code of Civil Procedure section 585(a). (Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)
 - (3) ☐ for default previously entered on (date):

2. Judgment to be entered.	Amount	Credits acknowledged	Balance
a. Demand of complaint	\$	\$	\$
b. Statement of damages *			
(1) Special	\$	\$	\$
(2) General	\$	\$	\$
c. Interest	\$	\$	\$
d. Costs (see reverse)	\$	\$	\$
e. Attorney fees	\$	\$	\$
f. TOTALS	\$	\$	\$
	For Default Only	For Default Only	For Default Only

g. Daily damages were demanded in complaint at the rate of: \$ _____ per day beginning (date): _____
 (* Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)

3. ☐ (Check if filed in an unlawful detainer case) Legal document assistant or unlawful detainer assistant information is on the reverse (complete item 4).

Date: **March 3, 2015**

Robin Mashal

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

FOR COURT USE ONLY	(1) <input checked="" type="checkbox"/> Default entered as requested on (date): MAR 6 - 2015 (2) <input type="checkbox"/> Default NOT entered as requested (state reason):	Sherri R. Carter Clerk, by Suzanne Wong , Deputy
--------------------	--	---

CIV-100

PLAINTIFF/PETITIONER: Yoram Cohen	CASE NUMBER:
DEFENDANT/RESPONDENT: Birdsboro Kosher Farms Corp.	BC 554592

4. Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.). A legal document assistant or unlawful detainer assistant ☐ did ☐ did not for compensation give advice or assistance with this form. (If declarant has received any help or advice for pay from a legal document assistant or unlawful detainer assistant, state):

a. Assistant's name:
b. Street address, city, and zip code:

c. Telephone no.:
d. County of registration:
e. Registration no.:
f. Expires on (date):

5. ☒ Declaration under Code of Civil Procedure Section 585.5 (required for entry of default under Code Civ. Proc., § 585(a)).

This action

- a. ☐ is ☒ is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
b. ☐ is ☒ is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
c. ☐ is ☒ is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. Declaration of mailing (Code Civ. Proc., § 587). A copy of this Request for Entry of Default was

- a. ☐ not mailed to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney (names):
b. ☒ mailed first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:

(1) Mailed on (date):

(2) To (specify names and addresses shown on the envelopes):

March 3, 2015

Isaac Perlmutter, Issy Perlmutter, 75 Carlton Road, Monsey, NY 10952

March 3, 2015

Birdsboro Kosher Farms Corp., 1100 Lincoln Road, Birdsboro, PA 19508

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.
Date: March 3, 2015

Robin Mashal

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

7. Memorandum of costs (required if money judgment requested). Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):

a. Clerk's filing fees	\$
b. Process server's fees	\$
c. Other (specify):	\$
d.	\$
e. TOTAL	\$ For Default Only

- f. ☐ Costs and disbursements are waived.

- g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

8. ☐ Declaration of nonmilitary status (required for a judgment). No defendant named in item 1c of the application is in the military service so as to be entitled to the benefits of the Servicemembers Civil Relief Act (50 U.S.C. App. § 501 et seq.).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

Exhibit B

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Robin Mashal (California State Bar No. 205003) CENTURY CITY LAW GROUP, APC 1875 Century Park East, Sixth Floor Los Angeles, California 90067-2507 TELEPHONE NO.: (310) 286-2000 FAX NO. (Optional): (310) 286-2525 E-MAIL ADDRESS (Optional): -- ATTORNEY FOR (Name): Yoram Cohen, Plaintiff		FOR COURT USE ONLY <div style="text-align: center; font-size: 1.2em; font-weight: bold;">FILED</div> Superior Court of California County of Los Angeles <div style="text-align: center; font-size: 1.1em;">AUG 26 2015</div> Sherri A. Carter, Executive Officer/Clerk By: <u>S. Ontiveros</u> Deputy Susana C. Ontiveros	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles, California 90012 BRANCH NAME: Central Judicial District, Stanley Mosk Courthouse		<div style="text-align: center; font-weight: bold;">RECEIVED</div> <div style="text-align: center; font-weight: bold;">JUN 14 9 REC'D</div>	
PLAINTIFF: Yoram Cohen DEFENDANT: Birdsboro Kosher Farms Corp., et. al.			
<div style="text-align: center; font-weight: bold;">JUDGMENT DEPT 42</div> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> By Clerk <input checked="" type="checkbox"/> By Court </div> <div> <input checked="" type="checkbox"/> By Default <input type="checkbox"/> On Stipulation </div> <div> <input type="checkbox"/> After Court Trial <input type="checkbox"/> Defendant Did Not Appear at Trial </div> </div>		CASE NUMBER: <div style="text-align: center; font-size: 1.1em;">BC 554592</div>	

JUDGMENT

(Dept. 42)

1. ☒ **BY DEFAULT**
 - a. Defendant was properly served with a copy of the summons and complaint.
 - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
 - c. Defendant's default was entered by the clerk upon plaintiff's application.
 - d. ☐ **Clerk's Judgment** (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
 - e. ☒ **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
 - (1) ☐ plaintiff's testimony and other evidence.
 - (2) ☒ plaintiff's written declaration (Code Civ. Proc., § 585(d)).

2. ☐ **ON STIPULATION**
 - a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
 - b. ☐ the signed written stipulation was filed in the case.
 - c. ☐ the stipulation was stated in open court ☐ the stipulation was stated on the record.

3. ☐ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
 - a. The case was tried on (date and time):
before (name of judicial officer):
 - b. Appearances by:

<input type="checkbox"/> Plaintiff (name each): (1) (2) <input type="checkbox"/> Continued on Attachment 3b. <input type="checkbox"/> Defendant (name each): (1) (2) <input type="checkbox"/> Continued on Attachment 3b.	<input type="checkbox"/> Plaintiff's attorney (name each): (1) (2) <input type="checkbox"/> Defendant's attorney (name each): (1) (2)
--	--
 - c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
 - d. ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.

ORIGINAL

PLAINTIFF: Yoram Cohen	CASE NUMBER:
DEFENDANT: Birdsboro Kosher Farms Corp., et. al.	BC 554592

JUDGMENT IS ENTERED AS FOLLOWS BY: ☒ THE COURT ☐ THE CLERK

4. ☐ **Stipulated Judgment.** Judgment is entered according to the stipulation of the parties.

5. **Parties.** Judgment is

a. ☒ for plaintiff (name each): YORAM COHEN, an individual c. ☐ for cross-complainant (name each):

and against defendant (names): BIRDSBORO KOSHER FARMS CORP., a Pennsylvania Corporation; and ISAAC PERLMUTTER, an individual a/k/a Issy Perlmutter

☐ Continued on Attachment 5a.

and against cross-defendant (name each):

☐ Continued on Attachment 5c.

b. ☐ for defendant (name each):

d. ☐ for cross-defendant (name each):

6. **Amount.**

a. ☒ Defendant named in item 5a above must pay plaintiff on the complaint:

(1) <input checked="" type="checkbox"/> Damages	\$	200,000.00
(2) <input checked="" type="checkbox"/> Prejudgment interest at the annual rate of 4.50 %	\$	18,308.00
(3) <input checked="" type="checkbox"/> Attorney fees	\$	3,890.00
(4) <input checked="" type="checkbox"/> Costs	\$	590.00
(5) <input checked="" type="checkbox"/> Other (specify): Punitive Damages for Fraud	\$	300,000.00
(6) TOTAL	\$	522,788.00

c. ☐ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) <input type="checkbox"/> Damages	\$	
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> Other (specify):	\$	
(6) TOTAL	\$	

b. ☐ Plaintiff to receive nothing from defendant named in item 5b.
☐ Defendant named in item 5b to recover costs \$
☐ and attorney fees \$

d. ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.
☐ Cross-defendant named in item 5d to recover costs \$
☐ and attorney fees \$

7. ☒ Other (specify): Defendants are jointly and severally liable under this Judgment.

Date:

AUG 26 2015

☐

JUDICIAL OFFICER

HOLLY E. KENDIS

Date: ☐

☐ Clerk, by

Deputy

(SEAL)

CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by _____, Deputy

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1875 Century Park East, Suite 600, Los Angeles, California 90067-2507.

On April 21, 2015, I served on the interested parties in this action ☒ a true and correct copy of OR ☐ the original of the foregoing document(s) described as: **[PROPOSED] JUDGMENT BY COURT AFTER DEFAULT.**

☒ **(BY MAIL)** By placing said documents in postage pre-paid envelope(s), sealed and addressed as shown on the attached service list, and depositing the same with the United States Postal Service the same day. I am readily familiar with this firm's business practice for collection and processing of correspondence by U.S. Mail. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date stated in this proof of service.

☐ **(BY OVERNIGHT DELIVERY)** By placing said documents in Overnight Express™ envelope(s), sealed and addressed as shown on the attached service list, and depositing the same within the Overnight Express™ deposit box at Los Angeles, California, before the scheduled pickup time, to be delivered to the parties the next day.

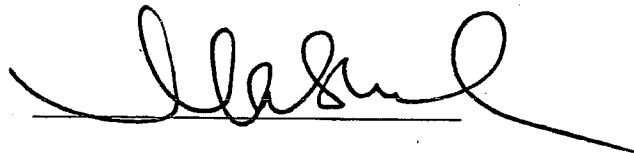
☐ **(BY FACSIMILE)** By causing the said document(s) to be transmitted by electronic facsimile machine to the facsimile number(s) of those parties specifically indicated on the attached service list, in compliance with the California Rules of Court, with no error reported by the machine.

☐ **(BY PERSONAL SERVICE)** I hand delivered said documents to the address(es) indicated on the attached service list.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California, that the above is true and correct.

☐ **(FEDERAL)** I declare that ☐ I am a member of the bar of this court OR ☐ I am employed in the office of a member of the bar of this court at whose direction this service was made, and that the above is true and correct.

Executed on April 21, 2015, at Los Angeles, California.



SERVICE LIST

Isaac Perlmutter
Issy Perlmutter
75 Carlton Road
Monsey, NY 10952

Birdsboro Kosher Farms Corp.
1100 Lincoln Road
Birdsboro, PA 19508

Dept 42: (213) 633-0162

Exhibit C

ORIGINAL

Michael E. Schwimer, Esq. (SBN 255567)
 Megan E. Klein, Esq. (SBN 276430)
 SCHWIMER WEINSTEIN LLP
 2665 Main Street, Suite 200
 Santa Monica, CA 90405
 Telephone: (310) 957-2700
 Facsimile: (310) 957-2701

Attorneys for Defendant
 Birdsboro Kosher Farms Corp.

FILED
 Superior Court of California
 County of Los Angeles

JAN 28 2016

Sherri R. Carter, Executive Officer/Clerk
 By Natasha Rose, Deputy
 Natasha Rose

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

YORAM COHEN, an individual;
 Plaintiff,

v.

BIRDSBORO KOSHER FARMS CORP., a
 Pennsylvania Corporation; ISAAC
 PERLMUTTER, an individual a/k/a Issy
 Perlmutter, and DOES 1 through 50 inclusive,
 Defendants.

CASE NO.: BC 554592
 [Complaint filed: August 13, 2014]

BY FAX

NOTICE OF RULING

Date: 1/27/2016
 Time: 8:30 a.m.
 Dept.: 42

TO ALL PARTIES TO THIS ACTION AND THEIR ATTORNEYS OF RECORDS:

PLEASE TAKE NOTICE THAT on January 27, 2016 at 8:30 a.m., in Department 42 of the above-captioned Court, located at 111 North Hill Street, Los Angeles, California, the Honorable Holly E. Kendig presiding, the Defendant's Motion to Set Aside Entry of Default, came on for hearing. Mr. Michael Schwimer, Esq. appeared on behalf of Defendant Birdsboro Kosher Farms Corp. Mr. Robin Mashal, Esq. appeared on behalf of Plaintiff Yoram Cohen. The Court's Order entered on January 27, 2016, is attached hereto as Exhibit "A."

The Court made the following orders:

1. The Default entered against Defendant Birdsboro Kosher Farms Corp. on March 6, 2015 is hereby vacated;

2. The Default Judgment entered against Defendant Birdsboro Kosher Farms Corp. on August 26, 2015 is hereby vacated;

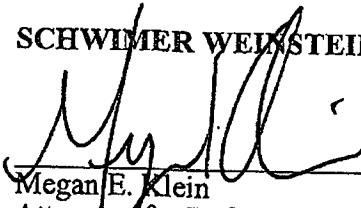
3. The Court's order of March 3, 2015, on the Motion for an Order that Matters in Requests for Admissions, Set One, Served on Birdsboro Kosher Farms Corp. be Deemed Admitted, or Alternatively for an Order Compelling Responses to All Discovery Requests Served, and Imposing Monetary Sanctions, is vacated;

4. Defendant Birdsboro Kosher Farms Corp. is to file a responsive pleading within thirty (30) days of the date of this order; and

5. Defendant Birdsboro Kosher Farms Corp. is to give notice.

Dated: January 28, 2016

SCHWIMER WEINSTEIN LLP


Megan E. Klein
Attorney for Defendant
Birdsboro Kosher Farms Corp.

SCHWIMER WEINSTEIN LLP
2665 MAIN STREET, SUITE 200
SANTA MONICA, CA 90405

Exhibit C

**PROOF OF SERVICE -- §1013a CODE OF CIVIL PROCEDURE,
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 2665 Main St., Suite 200, Santa Monica, CA 90405.

On January 28, 2016, I served the foregoing document described as **NOTICE OF RULING** on all interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows:

Attorneys for Plaintiff:

YORAM COHEN

Robin Mashal, Esq.

Century City Law Group, aPC

1875 Century Park East, Sixth Floor

Los Angeles, CA 90067

robin@centurylawyer.com

Fax: (310) 286-2525

Phone: (310) 286-2000

☒ **By Mail:** I caused such envelope to be deposited in the mail at Santa Monica, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☐ **By Overnight Delivery:** I caused such envelope to be sent via overnight delivery service. The envelope was deposited in or with a facility regularly maintained by the express service carrier with delivery fees paid or provided for.

☐ **By Fax:** I caused such document to be transmitted by facsimile. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and the transmission was reported as complete and without error.

☐ **By Email:** I caused such document to be transmitted via electronic mail to the e-mail address set forth on the attached service list on this date before 5:00 p.m.

☐ **By Personal Service:** I caused such envelope to be delivered by hand to the offices of the addressee(s).

☒ **State:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 28, 2016, at Santa Monica, California.

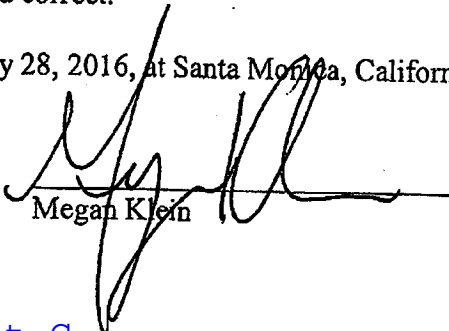

Megan Klein

Exhibit C

A

01/20/2016

Exhibit C

1 Michael E. Schwimer, Esq. (SBN 255567)
2 SCHWIMER WEINSTEIN LLP
3 2665 Main Street
4 Suite 200
5 Santa Monica, CA 90405
6 Telephone: (310) 957-2700
7 Facsimile: (310) 957-2701

CONFIRMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JAN 27 2016

Sherri H. Carter, Executive Clerk/Clerk

By Susana C. Ontiveros, Deputy

5 Attorney for Defendant
6 Birdsboro Kosher Farms Corp.

7
8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

10
11 YORAM COHEN, an individual;

12 Plaintiff,

13 v.

14 BIRDSBORO KOSHER FARMS CORP., a
15 Pennsylvania Corporation; ISAAC
16 PERLMUTTER, an individual a/k/a Issy
17 Perlmutter, and DOES 1 through 50 inclusive,

18 Defendants.

CASE NO.: BC 554592
[Complaint filed: August 13, 2014]
Assigned to the Hon. Holly Kendig

19 ~~PROPOSED~~ ORDER

Date: 1/27/2016
Time: 8:30 a.m.
Dept.: 42

20
21 Defendant Birdsboro Kosher Farms Corp.'s Motion to Set Aside Entry of Default, came on for
22 hearing on January 27, 2016 at 8:30 a.m., in Department 42 of the above-captioned Court, the Honorable
23 Holly E. Kendig presiding. Mr. Michael E. Schwimer, Esq. appeared on behalf of Defendant Birdsboro
24 Kosher Farms Corp.. Mr. Robin Mashal, Esq. appeared on behalf of Plaintiff Yoram Cohen

25 Having read and considered the moving papers, any opposition thereto, and the files and records
26 of this case, and having heard oral argument thereon, and good cause appearing, the Court ordered as
27 follows:

28 ///

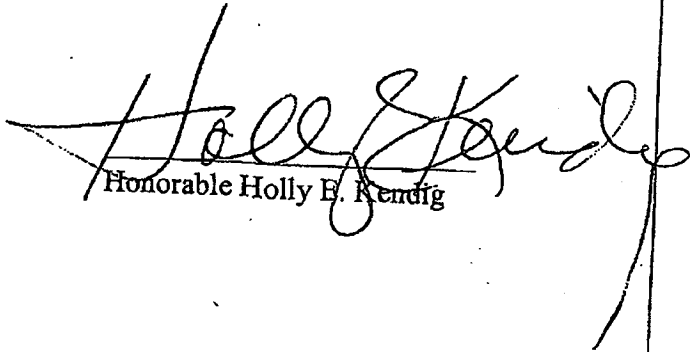
1 **IT IS HEREBY ORDERED** that the Default entered against Defendant Birdsboro Kosher
2 Farms Corp. on March 6, 2015 is hereby vacated.

3 **IT IS FURTHER ORDERED** that the Default Judgment entered against Defendant Birdsboro
4 Kosher Farms Corp. on August 26, 2015 is hereby vacated. *The order of March 3, 2015,*
5 *on the discovery motions is also vacated.*

6 **IT IS FURTHER ORDERED** that Defendant Birdsboro Kosher Farms Corp. file a responsive
7 pleading within thirty (30) days of the date of this order.

8 **IT IS SO ORDERED.**

9
10 DATED: JAN 27 2016

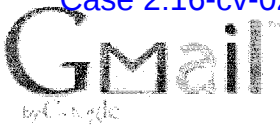

Honorable Holly E. Rendig

SOL WIVIEK WEINSTEIN LLP
2665 Main Street, Suite 200
Santa Monica, CA 90405

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Exhibit C

Exhibit D



Robin Mashal <robin@centurylawyer.com>

Cohen v. Birdsboro: 16-cv-02958

michael@swlawllp.com <michael@swlawllp.com>

Fri, May 6, 2016 at 1:00 PM

To: robin@centurylawyer.com

Cc: michael@swlawllp.com

Dear Mr. Mashal,

I left you a voicemail earlier to attempt to meet and confer one last time before I file 12b and 12e motions in the above referenced case. If you do not agree to either dismiss our client (Birdsboro), or amend the complaint to satisfy the probability and particularity requirements of Rule 8a and 9b respectively, and remedy the other defects in the complaint as to our client, we will have no choice but to file our motions.

I am more than happy to discuss the matter further, and if you are amenable, we will gladly hold off on filing the motions while we meet and confer further, so long as you agree to stipulate to granting an extension of time to respond while we are meeting and conferring.

I can be reached either in my office, or by cell 310.600.8700. I am also available to meet in person in your offices at a time and date convenient for you.

My very best.

—

Michael E. Schwimer, Esq.

SCHWIMER | WEINSTEIN LLP

2665 Main Street, Suite 200

Santa Monica, CA 90405

Tel. (310) 957-2700 x 103

Fax (310) 957-2701

www.swlawllp.com

—

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Exhibit D

Exhibit E



Robin Mashal <robin@centurylawyer.com>

Cohen v. Birdsboro: 16-cv-02958

Robin Mashal <robin@centurylawyer.com>
To: "Michael Schwimer Esq." <michael@swlawllp.com>
Bcc: Robin Mashal <robin.mashal@gmail.com>

Fri, May 6, 2016 at 3:09 PM

Dear Mr. Schwimer,

I am in receipt of your e-mail below.

First, I would like to meet and confer with you on Birdsboro Kosher Farms Corp.'s ("BKF's") improper removal of the *Cohen v. Birdsboro Kosher Farms Corp.*, Los Angeles Superior Court, Case Number BC 554592, to the Federal District Court. My client intends to bring a motion to remand the action the Los Angeles Superior Court, and will be seeking recovery of costs and legal fees associated therewith. Before doing so, I wanted to urge you to stipulate to the remand. Please advise me if you will so stipulate.

Second, assuming *arguendo* the removal was proper and the federal court had proper jurisdiction over this matter, I cannot see how any 12b or 12e motions will be applicable here. Your e-mail does not provide any further information either. If you want to explain your authority and argument, I will look at them.

Third, if BKF pays its liabilities to my client, my client will certainly consider dismissing BKF. As well, for any payments received from BKF, my client will provide appropriate credit against the existing judgment against Isaac Perlmutter.

--

Best Regards,

Mr. Robin Mashal
CENTURY CITY LAW GROUP, APC
1875 Century Park East, Sixth Floor
Los Angeles, California 90067-2507
Phone: (310) 286-2000
Fax: (310) 286-2525

[Quoted text hidden]

Exhibit E

Exhibit F

CENTURY CITY LAW GROUP

A PROFESSIONAL CORPORATION

1875 CENTURY PARK EAST, SIXTH FLOOR

LOS ANGELES, CALIFORNIA 90067-2507

PHONE: (310) 286-2000

FAX: (310) 286-2525

May 25, 2016

VIA FACSIMILE AND U.S. MAIL

Michael E. Schwimer, Esq.
Megan Klein, Esq.
SCHWIMER WEINSTEIN, LLP
2665 Main Street, Suite 200
Santa Monica, CA 90405

Phone: (310) 957-2700

Re: Cohen v. Birdsboro Kosher Farms Corp.
United States District Court, Los Angeles, Case No. 2:16-cv-02958
(Superior Court of California, County of Los Angeles, Case No. BC 554592)

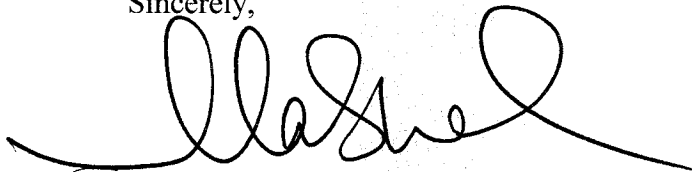
Dear Counsel,

I am sending this letter in an effort to further meet and confer with you on a couple of matters.

First, please advise me if you will stipulate to remand the above action to the Los Angeles Superior Court. The Court will certainly appreciate if this matter is resolved by stipulation, in lieu of burdening the Court's calendar.

Second, I wish to once again meet and confer with you concerning repayment of my client's loans. Although I am certain you already have these, I am enclosing further copies of my client's loan checks and the wire transfer document. Notably, the 3 checks totaling \$100,000 were remitted directly to Birdsboro Kosher Farms Corp. ("BKF"), and as to the remaining \$100,000 BKF acted as guarantor. The Court will likely refer this action to mediation, but it certainly is more efficient if this matter is resolved without incurring mediation costs. Kindly advise me if BKF is prepared to repay my client, or wishes to delay this matter causing further litigation costs.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robin Mashal', with a long horizontal flourish extending to the right.

Robin Mashal

RM:hs
Enclosures

Exhibit F

Print Images

Page 1 of 1

Routing	Sequence #	Paid Date	Amount	Account	Serial	Capture Source
12104288	8314032004	06112013	\$25000.00	630 [REDACTED]	5038	00007139

Y C ELAT MEAT MARKET 8730 W PICO BLVD LOS ANGELES, CA 90035-2206 (310) 569-8260		5038 15-247220 4672 6301220528
PAY TO THE ORDER OF <u>Birdsbore Kasher Farm</u>		DATE <u>06/11/13</u>
<u>Twenty Five Thousand Dollars only</u>		\$ <u>25000.00</u>
DOLLARS		
FOR <u>loan</u>		
MICR LINE: ⑈0000005038⑈ ⑆122000247⑆ 630 [REDACTED]		

For Deposit Only
 Account# 158025120

Print Images

Routing	Sequence #	Paid Date	Amount	Account	Serial	Capture Source
12104288	8714812970	06142013	\$25000.00	6301 [REDACTED]	5044	00007139

Y C ELAT MEAT MARKET
6730 W PICO BLVD
LOS ANGELES, CA 90035-2208
(310) 869-0260

DATE 6 14 2013

502 5044
18-501220 4327
6301291928

PAY TO THE ORDER OF BIRDSBORD KOSHER FARMS \$25000.00

TWENTY FIVE THOUSAND ⁰⁰/₁₀₀ DOLLARS

WELLS FARGO BANK, N.A.
California
wellsfargo.com

FOR LOAN

⑆0000005044⑆ 12320002497-630 [REDACTED]

For Deposit Only
Account# 158025120

Exhibit F

Print Images

Routing	Sequence #	Paid Date	Amount	Account	Serial	Capture Source
12104288	8213322463	06172013	\$50000.00	630 [REDACTED]	5049	00007139

Y C ELAT MEAT MARKET
8730 W RICO BLVD.
LOS ANGELES, CA 90055-2206
(310) 894-8280

DATE 06/17/13

PAY TO THE ORDER OF Birdsboro Kosher Farm \$ 50000.00

Fifty Thousand Dollars only

WELLS FARGO BANK, N.A.
Member FDIC

FOR Loan

[Signature]

⑈0000005019⑈ ⑆128000347⑈ 630 [REDACTED]

For Deposit Only
Account# 158025120

```
COMMAND ==>
$DYN0001 DYNAMIC WORK ITEM
WTFTU 230007 REGIONDC 02062013
*****
*DBT U/000000900904475
DEBIT VAL: 13/02/05
AMT: 100,000.00 CUR:USD
GL RECON: 114114
DEPT: 0000000855
YORAM COHEN
327 S HIGHLAND AVE
LOS ANGELES CA 90036-3024
SNDR REF NUM: 0000855035366870

AXCLS - DATA PRESENTATION
*****
CDT A/021000021 ADV: PED
CREDIT VAL: 13/02/05
AMT: 100,000.00 CUR:USD
GL RECON: 114114
DEPT: 0002729
JPMORGAN CHASE BANK, N.A.
4 NEW YORK PLAZA
FLOOR 15
NEW YORK, NY, US
COUNTRY OF RESIDENCY: US
BNF BANK: /
BNF: /810455485
Isaac Perlmutter
75 Carlton Rd
Moonsey, NY 10952
BNF MAILING COUNTRY: US
ORIG TO BNF INFO:
Loan

WIR:
CHG: BK?N
```

Exhibit F

PF3/15 - END; PF7/19 - BACK; PF8/20 - FORWARD; PF10/22 - LEFT; PF11/23 - RIGHT

CENTURY CITY LAW GROUP

A PROFESSIONAL CORPORATION

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LOS ANGELES, CALIFORNIA 90067-2507

PHONE: (310) 286-2000

FAX: (310) 286-2525

FACSIMILE COVER SHEET

TO: Schwimer Weinstein LLP

ATTENTION: Megan Klein, Esq.
Michael E. Schwimer, Esq.

FACSIMILE: (310) 957-2701

TELEPHONE: (310) 957-2700

CC: --

SUBJECT: Cohen v. Birdsboro Kosher Farms Corp., et. al.

DATE: Wednesday, May 25, 2016

TOTAL PAGES: 6 (including this cover sheet)

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Exhibit F

TRANSMISSION VERIFICATION REPORT

TIME : 05/25/2016 14:39
NAME : CENTURY CITY LAW GRP
FAX : 310-286-2525
TEL :
SER.# : D0J392045

DATE, TIME	05/25 14:37
FAX NO./NAME	913109572701
DURATION	00:01:59
PAGE(S)	06
RESULT	OK
MODE	STANDARD

CENTURY CITY LAW GROUP

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PHONE: (310) 286-2000

FAX: (310) 286-2525

FACSIMILE COVER SHEET

TO: Schwimer Weinstein LLP

ATTENTION: Megan Klein, Esq.
Michael E. Schwimer, Esq.

FACSIMILE: (310) 957-2701

TELEPHONE: (310) 957-2700

CC:

SUBJECT: Cohen v. Birdsboro Kosher Farms Corp., et. al.

DATE: Wednesday, May 25, 2016

TOTAL PAGES: 6 (including this cover sheet)

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1875 Century Park East, Suite 600, Los Angeles, California 90067-2507.

On July 1, 2016, I served on the interested parties in this action ☒ a true and correct copy of OR ☐ the original of the foregoing document(s) described as: **OPPOSITION TO DEFENDANT BIRDSBORO KOSHER FARMS CORP.'S MOTION TO DISMISS AND MOTION FOR MORE DEFINITIVE STATEMENTS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ROBIN MASHAL; EXHIBITS.**

☒ **(BY MAIL)** By placing said documents in postage pre-paid envelope(s), sealed and addressed as shown on the attached service list, and depositing the same with the United States Postal Service the same day. I am readily familiar with this firm's business practice for collection and processing of correspondence by U.S. Mail. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date stated in this proof of service.

☒ **(FEDERAL)** I declare that ☒ I am a member of the bar of this court OR ☐ I am employed in the office of a member of the bar of this court at whose direction this service was made, and that the above is true and correct.

Executed on July 1, 2016, at Los Angeles, California.

/S/ Robin Mashal

Robin Mashal

SERVICE LIST

Michael E. Schwimer, Esq.
Megan Klein, Esq.
SCHWIMER WEINSTEIN, LLP
2665 Main Street, Suite 200
Santa Monica, CA 90405

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Isaac Perlmutter
Issy Perlmutter
75 Carlton Road
Monsey, NY 10952